

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

**(Continuation of California Notice Register 2002, No. 36-Z,
and Meeting of August 30, 2002.)**

NOTE: The Fish and Game Commission is exercising its powers under Section 202 of the Fish and Game Code as the following changes to the proposed regulations may not be available to the public for the full public comment period prior to adoption. See Updated Informative Digest changes shown in **bold face** type.

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 215, 220, 5508, 7071 and 8587.1 of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 205, 215, 220, 5508, 5509, 8585.5, 8586 and 8587.1 of said Code, proposes to add Section 1.91 and amend sections 1.90, 27.60, 27.65, 27.82, 28.27, 28.28, 28.29, 28.54, 28.55, 28.58 and 28.65, California Code of Regulations, regarding options for take of nearshore/shelf/slope rockfish, lingcod, cabezon, greenlings, California scorpionfish and ocean whitefish for consistency with Pacific Fishery Management Council rules.

Updated Informative Digest/Policy Statement Overview

The Pacific Fishery Management Council (Council) met September 10-13, 2002 and developed final regulatory recommendations affecting ocean recreational and commercial groundfish fisheries and fisheries for associated species commencing January 1, 2003. Most of the provisions approved by the Council are consistent with the regulations noticed in our Initial Statement of Reasons while some of them represent a slight departure from the original filing and require re-notice. These are as follows:

A) Creation of two new management “groups” including definitions and bag limits: “shallow nearshore rockfish,” two fish bag limit; and “groundfish,” 10 fish bag limit. Both groups have special conservation needs stemming from new harvest guidelines adopted by the Council for nearshore rockfish and sculpin stocks south of Cape Mendocino.

B) Reduced bag limits and seasonal adjustments south of Cape Mendocino for cabezon of 3 (from 10) fish and for greenlings of 2 (from 10) fish. These fish are part of the groundfish group and their inclusion in the bag limits and groundfish fishing seasons will help reduce impacts on rockfish stocks while maximizing season lengths for all species. This year, both fisheries were closed early in the year due to quota attainment.

C) An inseason closure mechanism is proposed for rockfish and lingcod fisheries north of Cape Mendocino in waters 27 fathoms or greater in depth if/when the harvest guideline for canary or yelloweye rockfish is reached. This change is needed to reduce impacts on these two overfished rockfish stocks in the event one or the other harvest guideline is reached before the end of the year while providing for continued fishing opportunity for nearshore fish stocks.

D) A special season for California scorpionfish (sculpin) in southern California (Huntington Flats) is provided in waters shallower than 50 fathoms during the months of July-August. This will allow recreational anglers to intercept these fish during their annual spawning migration in the area and will complement a commercial regulation for the same area and time period.

E) Additional language is included that authorizes the Department to close part of a Rockfish and Lingcod Management Area based on harvest guidelines established for subgroups of fishes. This is in response to provision C above and the adoption by the Council of new management subgroups.

The amended statement also provides greater specificity with regard to some of the original or proposed amended provisions, and attempts to clarify the intent and meaning of other provisions, including additional cross references where appropriate.

Under existing law, west coast groundfish, including rockfish and lingcod, are managed by the Pacific Fishery Management Council (Council) pursuant to the Pacific Coast Groundfish Fishery Management Plan (Groundfish Plan) to comply with policies and standards of the Federal Sustainable Fisheries Act, Public Law 94-265. The California Fish and Game Commission (Commission) adopts sport fishing regulations for groundfish that conform to those of the Council. Current federal law requires that rebuilding plans be adopted for those groundfish stocks that are determined by the Council to be overfished. A number of shelf and slope rockfish (those generally found deeper than 20 fathoms) and lingcod are currently assessed as overfished, with rebuilding expected to take several decades in the case of the overfished rockfish stocks. Overfished rockfish stocks and associated species for which regulations now exist (and for which changes are proposed in the 2003 calendar year) include bocaccio, canary, and yelloweye rockfish, California scorpionfish, and ocean whitefish. Concerns also exist for nearshore rockfish and associated species such as cabezon due to expected shifts in fishing effort from offshore waters closed to fishing.

Existing sportfishing regulations affecting the take of rockfish, lingcod, California scorpionfish and ocean whitefish include designated rockfish and lingcod management areas, seasonal closure periods that prohibit the take of rockfish, lingcod, California scorpionfish, and ocean whitefish in rockfish and lingcod management areas, minimum size and bag limits, and regulation of the number of hooks and lines that are authorized when rockfish and lingcod are aboard a vessel. California scorpionfish and ocean whitefish are prohibited in waters 20 fathoms or greater in depth during rockfish and lingcod closures to avoid the incidental take of overfished shelf rockfish and lingcod. Also, area and season closures exist in nearshore waters that coincide with all or portions of closure periods in shelf waters within rockfish and lingcod management areas. Regulations currently authorize the Commission to close sport fishing for rockfish and lingcod if the Department determines that harvest guidelines adopted as regulation by the National Marine Fisheries Service for lingcod, bocaccio, canary rockfish, and yelloweye rockfish are exceeded, or are projected to be exceeded. Also, a recreational minimum size limit exists for cabezon (a nearshore species).

Generally, sport fishing regulation changes being proposed reflect several options that will be considered by the Council and Commission for the 2003 fishing season. These regulatory measures will affect west coast recreational groundfish fisheries from the California-Oregon border to the U.S.-Mexico border and involve both State and federal waters off California. The Commission is expected to take action to conform to Council adopted groundfish sportfish regulation changes at the Commission's October 25, 2002 meeting. The proposed changes would prohibit the take of rockfish, lingcod, California scorpionfish, and ocean whitefish in waters [20-27] fathoms [(120-162 feet)] and greater north of 40 degrees, 10 minutes North Latitude (near Cape Mendocino), and waters greater than [10 to 20] fathoms [(60-120 feet)] or greater south of 40 degrees, 10 minutes North Latitude, depending on which minimum depth and closure period is finally adopted for the areas north and south of 40 degrees, 10 minutes, North Latitude near Cape Mendocino, Humboldt County.

Proposed changes to recreational fishing regulations for Council and Commission consideration involving waters from 40 degrees, 10 minutes North Latitude, south of Cape Mendocino, Humboldt County, north to the California - Oregon border include:

- a prohibition on the take and possession of rockfish and lingcod in waters [20 - 27] fathoms or greater (the exact depth to be determined), either all year, or from June - October, inclusive, or a less restrictive period to be determined (proposed change to Section 27.82, Title 14, CCR);
- a daily bag and possession limit of either 10 rockfish, or 10 rockfish and lingcod in combination with not more than two lingcod in the bag (proposed change to Section 27.60, Title 14, CCR);
- a reduction in the daily bag and possession limit for canary and yelloweye rockfish from one to zero, and elimination of the authorization of up to two yelloweye rockfish per boat;

- a seasonal closure on the take of rockfish and lingcod in nearshore waters to range from open all year to closed during specified months, to be determined,
- a requirement that barbless circle hooks be used when rockfish and lingcod are aboard;
- an increase in the minimum size limit for cabezon from 15 inches in total length, to 16 inches in total length; and
- authority to close the recreational fishery for lingcod and rockfish to include nearshore rockfish, or subgroups of nearshore rockfish, and California scorpionfish when the Department determines that a harvest guideline published as regulation by the National Marine Fisheries Service has been exceeded or is projected to be exceeded.

Proposed changes to recreational fishing regulations for Council and Commission consideration involving waters south of 40 degrees, 10 minutes North Latitude, south of Cape Mendocino, Humboldt County to the U.S. - Mexico border include:

- a total prohibition on the take of rockfish, lingcod, California scorpionfish, and ocean whitefish in waters [10 - 20], fathoms [(60-120 feet)] deep or greater (the minimum depth beyond which fishing is prohibited will be determined at the Council's September meeting);
- a reduction in the current sport limit of 10 rockfish per day in the aggregate of authorized species (reduced from current 10 to between 9 and 5 per day) during those time periods, and in those areas, where rockfish would continue to be authorized for take in waters less than [10 - 20] fathoms deep (the exact depth to be determined); Rockfish in the bag limit in nearshore waters open to fishing would be nearshore species of rockfish except [zero - two] could be shelf species other than bocaccio, cowcod, canary rockfish, and yelloweye rockfish (proposed change to sections 27.60 and 28.55, Title 14, CCR);
- a total prohibition on the take of bocaccio, canary, and yelloweye rockfishes (bag limits to be zero);
- a change in the bag limit for California scorpionfish (range of 5 -10 being considered);
- new sportfishing minimum size limits for black-and-yellow, gopher, and kelp rockfishes (10 inches total length), and China and grass rockfishes (12 inches total length);
- an increase in the cabezon minimum size limit from 15 to 16 inches total length;
- a requirement to use barbless circle hooks when rockfish and lingcod are aboard;
- authority to close the recreational fishery for lingcod and rockfish to include nearshore rockfish, or subgroups of nearshore rockfish, and/or California scorpionfish, when the Department determines that a harvest

guideline published as regulation by the National Marine Fisheries Service has been exceeded or is projected to be exceeded.

These measures are proposed to help meet rebuilding goals for overfished stocks of rockfish and lingcod in offshore shelf waters; to help keep harvests of nearshore fish stocks within harvest guidelines established for nearshore rockfish, California scorpionfish, and cabezon; and to address concerns for shifts in fishing effort to nearshore fish stocks expected to result from closures to fishing offshore.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Board of Supervisors Chambers, 981 H Street, Suite 100, Crescent City, CA, on Friday, October 25, 2002 at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before October 21, 2002, at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov, but must be received no later than October 25, 2002, at the hearing in Crescent City, CA. E-mail comments must include the true name and mailing address of the commentor.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John M. Duffy, Assistant Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to John M. Duffy or Tracy L. Reed at the preceding address or phone number. Patricia Wolf, Department of Fish and Game, (562) 342-7108, has been designated to respond to questions on the substance of the proposed regulations. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at http://www.dfg.ca.gov/fg_comm/.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person

interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action is expected to have a coast wide adverse economic impact affecting business, although this is not expected to affect the ability of California businesses to compete with businesses in other states. The regulation changes are expected to further restrict recreational fishing opportunities in California, particularly the activities of commercial passenger fishing vessels (CPFVs) that rely in large part on taking passengers fishing for rockfish and lingcod to offshore waters 20 fathoms or greater in depth. In regard to effects of rockfish and lingcod closures on the ability of local businesses to compete with businesses in other states, it is unlikely that fishermen unable to fish due to local closures would opt to go to Oregon to fish for rockfish and lingcod given that closures off northern California will also apply in waters off Oregon.

Generally, owners and operators of CPFVs that rely on fishing for rockfish and lingcod off central and northern California have fewer options than those CPFVs operating in waters off southern California. CPFVs that may no longer target rockfish and lingcod in shelf waters must either redirect their fishing operations to nearshore waters for rockfish and lingcod, target other species, or engage in other vessel activities, such as seasonal whale watching, or be faced with finding other occupations. Owners and operators of CPFVs off southern California often target rockfish and lingcod during winter months when resident and migratory game fishes are not as active or are unavailable. Owners and operators of many CPFVs off central and northern California often rely to a great extent on fishing for rockfish and lingcod; other available target species, including salmon and albacore, tend to be seasonally available.

The practical impact of these regulations is expected to be decreased recreational fishing activity for several species of rockfishes and lingcod along

California's coast due to prohibition of the take of these species in waters deeper than 20 fathoms. The extent to which businesses associated with recreational fishing for these species will be affected depends on how consumer demand for their services responds under the proposed fishing restrictions. It is unlikely that most recreational fishermen will abandon all ocean fishing activities due to these regulations. Rather, as indicated above, some unknown portion of this fishing sector will substitute other less restricted ocean species in order to continue their ocean fishing activities, but some decrease in overall fishing activity will likely result.

Information from the National Marine Fisheries Service (NMFS) estimates anglers aboard CPFVs take roughly 43% of all ocean rockfishes caught by all recreational fishermen in northern California and 67% in southern California. Year 2001 fishing log data from the Department of Fish and Game shows 5.9% of all northern California CPFV trips and 0.8% of all southern California CPFV trips took place in waters greater than 20 fathoms and specifically targeted rockfish and lingcod. Of those total trips in 2001 for which logs indicate rockfish and lingcod as the target species, the percent of fishing trips to waters greater than 20 fathoms is 34 percent and 75 percent for northern and southern California, respectively. Based on 2002 surveys, average passenger fares for fishing trips on CPFV boats are \$74 and \$57 for northern California and for southern California, respectively. In a 1998-1999 NMFS report of marine recreational fishing trip-related expenditures, an estimated \$17.0 million is directed annually to CPFV services in northern California and \$81.4 million is directed annually to CPFV services in southern California.

In the worst case scenario (all former rockfish and lingcod trips to waters greater than 20 fathoms are considered lost revenue to the CPFV fishing sector), we can project annual revenue losses to CPFV owners and related businesses of \$998,000 in Northern California (or 5.9% of \$17 million), and \$666,000 in Southern California (or 0.8% of \$81.4 million). Note, however, that it is unlikely that revenue losses this high will occur, since recreational fishermen may substitute other ocean species for rockfish and lingcod.

Since these conformance regulations are subject to review and change each year, we project costs impacts for one-year only. This one-year time horizon for cost impacts, equal to the useful life of the proposed regulations, thus does not require present value discounting.

Impacts of options presented in the Amended Initial Statement of Reasons do not differ from impacts discussed in the original Initial Statement of Reasons dated August 27, 2002.

The Commission has made an initial determination that the adoption/amendment of these regulations may have a significant adverse economic impact on businesses, although this is not expected to affect the ability of California businesses to compete with businesses in other states. The Commission has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit alternative proposals. Submissions may include the following considerations:

- (i) the establishment of differing compliance or reporting requirements or timetables which take into account the resources available to businesses;
 - (ii) consolidation or simplification of compliance and reporting requirements for businesses;
 - (iii) the use of performance standards rather than prescriptive standards; or
 - (iv) exemption or partial exemption from the regulatory requirements for business.
- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

Some loss of jobs could result if Commercial Passenger Fishing Vessels are unable to continue to operate profitably due to the closures and other proposed regulatory measures [See comments under (a) above].

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action except those discussed under (a) above.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.

(h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

John M. Duffy
Assistant Executive Director

Date: September 24, 2002